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No.

73-16

In the

Supreme Court of the United States

October Term, 1972

CHARLES H. MOGULNICKI

Petitioner.

VS

TROOPER ROBERT KELLER
AND
SERGEANT MORTON DENNERSTEIN
Criminal Intelligence Division
STATE OF CONNECTICUT

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT.

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To the Chief Justice and Associate Justices of the United States Supreme Court.

The Petitioner, Charles H. Mogulnicki, prays that this court, issue a Writ to review the judgment of the United States District Court, District of Connecticut, and the judgment of the United States Court of Appeals for the Second Circuit, in the above case.

OPINION BELOW

The opinion below is reported at Civil No. 14,788 and 73-1406 and is printed in the Appendix to this petition, for Summary Judgment and Judgment.

JURISDICTION

The judgment of the court below was entered on January 16,1973. A timely appeal to the United States Court of Appeals for the second circuit was filed, the judgment was dismissed on April 10,1973. The jurisdiction of this court is invoked under the Fourth and Fourteenth Amendments to the United States Constitution.

PRINCIPAL ISSUES

1. Whether the United States District Court, abused its discretion in dismissing and denying the plaintiffs motion for Summary Judgment and Judgment as a matter of law and granting the defendants, cross motion for summary judgment on the defence of statute of limitation.

2. Whether the United States District Courts, dismissal and denial of the plaintiffs motion for summary judgment and judgment as a matter of law, was made with prejudice.

3. Whether the United States Court of Appeals, dismissal of the appellants appeal from the United States District Court, as a matter of law, was made with prejudice.

4. Whether the defenses raised by the defendants were proper basis for the United States District Court and the United States Court of Appeals, to shun the mandate of the United States Constitution, denying the plaintiff, his rights under the 4th and 14th Amendments to the Constitution.

STATEMENT OF THE CASE

On December 4,1967 Trooper Robert Keller and Sgt. Morton Dennerstein, of the criminal intelligence, State of Connecticut, made a warrantless arrest and conducted a warrantless search and seizure of the petitioners person at his place of employment, Standard Knapp, Division of Emhart, Main Street, Portland, Connecticut. Charged the petitioner with the crime of "pool selling" a misdemeaner under Section 53-295 of the Connecticut General Statutes and seized the sum of $705.00 from a wallet on his person.

A motion to dismiss the information against the petitioner, on the grounds that the warrantless arrest and warrantless search and seizure of the $705.00 from the petitioners person was in violation of the Statutes of the State of Connecticut and of Section 7-9 of Article First of the Connecticut Constitution of 1965 and of Amendments 4 and 14 of the Constitution of the United States, was denied by Judge Angelo G. Santaniello, on July 5,1968.

On July 11,1968 the petitioner, was brought to trial and was convicted before a jury and judge Eli Cramer, in the 9th Circuit Court of Connecticut, receiving a sentence of one year in jail, suspended after (60) days and a $200.00 fine. The money seized from the petitioners person, the slips of papers with horses names on them, that were never in the possession of the petitioner, scooped up between 5 or 6 persons at the tool-makers bench, the "Sports Eye" newspaper taken from the petitioners tool-box, this evidence seized after the arrest of the petitioner, was introduced to the court without an objection.

On January 9,1970 the appellant division of the Connecticut State Court, found no error in the conviction of the petitioner.

This court did not pass upone the Constitutionality of the petitioners arrest. The Connecticut Supreme court, denied the petitioner his petition for Certification.

On December 16,1970 the petitioner was put in detention by the State of Connecticut, at the Hartford State Jail to serve a (60) day sentence, on Feb.16,1971 the petitioner served his entire sentence and upon his release, paid the State of Connecticut, the fine.

On March 15,1971 the petitioner, filed a suit for damages for $250,000.00 dollars upon the defendants, because of an Illegal arrest and Illegal search and seizure.

On March 3,1972 the petitioner, filed a motion for trial by jury in the above case. The motion was denied by the United States District Court.

On May 25,1972 the plaintiff, filed a request for admission of facts upon the defendants in the above entitled case. The defendant's in response to the request for admission, admit the allegations in the complaint. (Exhibit D)

REASON FOR GRANTING WRIT

Two reasons are presented. (1) That the petitioner was denied, due process and equal protection under the law, because the arresting officers, conducted a warrantless search and seizure of the petitioners person. (2) That the petitioner was denied due process and equal protection under the law, because the arresting officers failed to obtain an arrest warrant.

CONCLUSION

For the reasons giving it is respectfully submitted that the ruling of the United States District Court, and the United States Court of Appeals, should be reversed as a matter of law.

CASE AUTHORITIES

ARTICLE 4 of the Bill of Rights, provides.

" The right of people to be secure in there persons, houses, papers and effects against unreasonable searches and seizure, shall not be violated and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particilarly describing the place to be searched, and the persons or things to be seized."

Henry v United States, Supra 361 U.S. at 103.

The Fourth Amendment specifically interdicts the court from considering evidence seized after the arrest in determing the validity of the arrest.

State of Conn. v Mogulnicki, (1970) 270 2d 364.

The results of a search and seizure cannot be used to sustain a finding of probable cause for arrest.

Connecticut General Statute. Section 52-595 Fraudulent concealment of cause of action.

If any person, liable to an action by another, fraudulently conceals from him the existence of the cause of such action, such cause of action shall be deemed to accrue against such person so liable there for at the time when the person entited to sue there on first discovers of its existence.

Charles H. Mogulnicki

Pro-Se Attorney for Petitioner

APPENDIX

CHARLES H. MOGULNICKI

VS

TROOPER ROBERT KELLER
and
SERGEANT MORTON DENNERSTEIN
Criminal Intelligence
State of Connecticut

CIVIL NO. 14,788

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANUARY 16, 1973.

Honorable: T. Emmet Clarie, Judge.

RULING ON CROSS-MOTION
FOR SUMMARY JUDGMENT

The plaintiff, Charles H. Mogulnicki, appearing Pro-Se has moved for summary judgment pursuant to Rule 56, Fed. R. Civil. P. and the defendants Trooper Robert Keller and Sgt. Morton Dennerstein of the criminal intelligence, State of Connecticut, filed a cross-motion for summary judgment. The plaintiff, filed this complaint in Court on March 15,1971, against the defendant's seeking compensatory and punitive damages in the amount of $250,000.00 alleging that the named defendants, subjected the plaintiff to an illegal arrest,and an illegal search and seizure in violation of his rights under the fourth and fourteenth Amend - ments to the United States Constitution.

The essence of the plaintiff's complaint is that his arrest and subsequent seizure from him of the $705.00 was illegal, because no search warrant was issued.

The defendant's, on the other hand, have raised two affirmative defenses, each of which operates as a bar to the present action. (1) Collateral estoppel and res adjudicata, and (2) the statute of limitations.

There is no question but that the question of probable cause for the plaintiff arrest was put in issue in the State Courts and determined adversely to him.

Accordingly, the plaintiff's motion for summary judgment is denied. The defendant's Cross-motion for summary judgment is granted.

CIVIL NO.73-1406

UNITED STATES COURT OF APPEALS
SECOND.CIRCUIT

APRIL 10,1973

RULING ON APPELLANT'S APPEAL FOR SUMMARY JUDGMENT AND JUDGMENT.

It is hereby ordered that upon consideration of the motion made herein by counsel for the Appellees, by notice of motion dated March 23,1973, to dismiss the appeal from the United States District Court for the District of Connecticut, for lack of prosecution or, in the alternative, to direct the appellant to post a bond for cost in the minimum of $250 dollars, pursuant to Rule 8 Fed. R. of Appellate Procedure, that the motion to dismiss be and is hereby is granted.

Before: Hon. J. Joseph Smith, Hon. Paul R. Hays, Hon. William H. Timbers. Judges.

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinions of the District Court and the Court of Appeals, are not officially reported. The Court of Appeals decision (Case No.

73-1406) is reproduced, substantially correctly, in the petitioner's Appendix. The District Court opinion (Case No. 14788), contrary to petitioner's assertion, does not appear in petitioner's Appendix, as hereinafter discussed.

JURISDICTION

The petitioner has cited no statutory jurisdictional basis. None exists for a writ from the District Court. Also, none of the suggested bases in Rule 19, Rules of the Supreme Court of the United States, are presented in this matter, there are no significant issues to be presented, and there are no special or important reasons for granting review.

QUESTIONS PRESENTED

The Petitioner presents four questions under the heading: "Principal Issues". The actual question presented is: If a valid affirmative defense bars an action, is summary judgment for the defendant proper?

CONSTITUTIONAL PROVISIONS

Petitioner fails to cite any Constitutional provisions. Upon the questions presented, none are directly involved.

STATEMENT OF THE CASE

This is an action by the plaintiff-Petitioner for damages arising out of his arrest and conviction for pool-selling. The defendants-Respondents, are two Connecticut

State Police Officers, sued in their representative capacity only. The Petitioner complains of warrantless arrest, search and seizure. The action was filed on December 15, 1971 in the United States District Court, District of Connecticut.

Following the filing of an Answer and Discovery procedures, the plaintiff-Petitioner moved for Summary Judgment. The defendants-Respondents filed a Cross-Motion for Summary Judgment. After memoranda were filed, oral argument was heard, and the District Court, on January 16, 1973, rendered a decision granting the defendants' cross-motion. On January 18, 1973, Judgment entered in favor of the defendants. The plaintiff moved for an amended judgment, which motion was denied on February 13, 1973. Thereafter the plaintiff-Petitioner appealed to the Court of Appeals, Second Circuit, which appeal was dismissed upon defendants'-Respondents' motion, for lack of prosecution, on April 10, 1973. Petitioner's Motion for Rehearing was denied on May 7, 1973. The plaintiff-Petitioner has now filed petitions to this Court for certiorari.

ARGUMENT

A. Propriety of Questions Raised

Petitioner received an adverse decision in the District Court. His appeal was dismissed. That dismissal was discretionary and should not be reviewed. Petitioner does not attack the dismissal. Unless the Circuit Court dismissal was improper, the doings of

the District Court are not properly before this Court, and thus also should not be reviewed.

B. Supreme Court Rules - Petition Contents

The Rules of this Court are specific as to the content of the document upon which a petition for writ of certiorari is considered. The requisite content of a Petition for Certiorari is set out in Rule 23. Petitioner has not complied with the rule.

As filed, the Petitioner fails to state a basis for jurisdiction, in that it fails to cite a statutory provision providing jurisdiction; [Rule 23(b)(iii)]; it fails to properly set forth the constitutional provisions and statutes involved [Rule 23(c)]; no basis for federal jurisdiction in the first instance is shown [Rule 23 (g)]; no direct and concise argument amplifying the reasons relied on for allowance of the writ, with regard to Rule 19, is provided [Rule 23(h)]; and the Appendix is incomplete, [Rule 23(i)].

All opinions sought to be reviewed must be appended. Rule 23(i). Petitioner has printed what purports to be the District Court Opinion. What the ruling of the District Court, found at pages 1a of Petitioner's Appendix is, however, is selected excerpts from that opinion, some paraphrased and some quoted. [Specifically: paragraph one is a paraphrase of paragraph one, page one, of the District Court's Ruling; paragraph two is a partial quote of a portion of pages three to four; paragraph three is a fairly accurate quote of a portion of page five; paragraph four is a brief quote from

page six; and paragraph five is a partial quote of the last paragraph of page seven.] The Court of Appeals Ruling is a reasonably accurate reproduction.

C. Questions Not of Reviewable Nature

The Petitioner raises four "Principal Issues". The first raises the propriety of the District Court's denial of Petitioner's Motion for Summary Judgment and granting of the Respondents' cross-motion; the second asks whether the denial of summary judgment and the judgment entered were "with prejudice"; third, is whether the Court of Appeals dismissal was "with prejudice"; and fourth is whether Respondents' defenses were valid.

The first and fourth issues as stated are really the same. The Respondents interposed two affirmative defenses; res adjudicata and collateral estoppel; and the applicable statute of limitations, Connecticut General Statutes, §§ 52-584 or 52-577. The District Court found each defense to be a valid bar, and thus granted the cross-motion for summary judgment. Petitioner's Motion for Summary Judgment was denied for two reasons: first, the affirmative defenses were absolute bars; and second, the Petitioner failed to show lack of probable cause for the arrest.

As to res adjudicata and collateral estoppel, the Petitioner, in the criminal action resulting from the arrest which is the basis for this action, raised the same issues of warrantless arrest, search and seizure as in

this action at every judicial step open to him, all to no avail. Those steps were: Motion to Dismiss before the Connecticut Circuit Court; appeal to the Appellate Division of the Circuit Court; Petition for Certification to the Connecticut Supreme Court; Petition for Certiorari to the United States Supreme Court; Motion for Rehearing to the United States Supreme Court; and, upon incarceration, Writs of Habeas Corpus to the District Court, the Court of Appeals, and the United States Supreme Court. The Circuit Court upheld the arrest, search and seizure, the Appellate Division affirmed, and the Connecticut Supreme Court and the United States Supreme Court declined review. All Writs of Habeas Corpus were denied. Clearly, there is no reviewable issue raised by the District Court's holding, based upon Kaufman v. Moss, 420 F. 2d 1270, 1274 (3 Cir. 1970), cert. denied, 400 U. S. 846 (1970), that this action by the criminal defendant against agents of the state, is barred by res adjudicata and collateral estoppel.

As to the statute of limitations, the maximum period allowed is three (3) years. The arrest, search and seizure took place on December 4, 1967. This action was commenced on December 15, 1971. The time lapse was just over four (4) years. Well beyond the three year statutory limit. Again, clearly no significant issue is raised by the District Court's holding that this action is barred by Connecticut General Statutes, § § 52-584 and 52-577. Petitioner's reliance on the Connecticut fraudulent concealment statute, § 52-595 is clearly incorrect as in-

dicated by his claims in the criminal action from the very beginning, and no reviewable issue is raised thereby.

As to the other two issues raised, the answers are apparent, and patently insufficiently significant. Judgment entered in the District Court against the plaintiff (Petitioner). That judgment is final, and clearly "with prejudice". The dismissal by the Court of Appeals was clearly "with prejudice" since on both the original motion and the Motion for Rehearing the option was available to order corrective measures rather than dismissal. In any event, the question is not such as to warrant review by this Court.

CONCLUSION

The Petition fails "to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration", [Rule 23(4)]; in that it omits all arguments, jurisdictional statements and claims, and does not present the full decision protested. That failure alone is "sufficient reason for denying his petition." Id. Further, none of the questions raised are of the nature suggested by Rule 19, and thus no review is in order. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Joseph P. Cooney
Counsel for Respondents